IN THE HIGH COURT OF RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.430 OF 2007

For Approval and Signature :

HONOURABLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL

HONOURABLE MR. JUSTICE MOHAMMAD RAFIQ

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the civil judge ?

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Mahendra Kumar – Appellant
Versus
State of Rajasthan & Anr. - Respondents

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Appearance :
Mr. Mahendra Goyal, Advocate, for the appellant.

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL
and
HONOURABLE MR. JUSTICE MOHAMMAD RAFIQ

Date : 11/09/2007

ORAL JUDGMENT

(Per : HONOURABLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL)

The instant appeal is directed against the judgment dated July 04, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition no.8905/2002 by which the prayers made by the appellant (i) to set aside the order dated April 06, 1998 passed by the Estate Officer directing eviction of the appellant from the disputed property under the provisions of Rajasthan Public Premises (Eviction of Unauthorized

Occupants) Act, 1964 (for short, 'the Act') and; (ii) the order dated September 30, 2002 passed by the learned Additional District & Sessions Judge, Jhunjhunu rejecting the appeal filed by the appellant against the abovereferredto order, are refused.

The appellant is resident of village Kankariya. In the year 1985, when the appellant was *sarpanch* of the said village, he had raised construction on the land belonging to the Government Girls Primary School, District Jhunjhunu. Therefore, the Headmaster of the school had addressed a letter dated January 16, 1985 to the Collector complaining about the construction being carried out by the appellant. Letters were also written to the District Education Officer in the year 1987 about the illegal construction made by the appellant over the land belonging to the government. In spite of the letters to the Collector and the District Education Officer, no steps were taken either to prevent the appellant from raising constructions or subsequently for removing the constructions. Thereafter, the State through Development Officer and the Principal, Government Girls Primary School approached the Estate Officer under the provisions of the Act complaining that the appellant misusing his powers as *sarpanch,* had constructed the shops on the government land and, therefore, his eviction should be ordered. Thereupon, a notice dated January 22, 1996 was issued to the appellant seeking his eviction from the shops concerned. After hearing the appellant, the Estate Officer by an order dated August 08, 1996 ordered the eviction of the appellant from the shops. Feeling aggrieved, the appellant preferred an appeal before the Appellate Authority. The learned District Judge, Jhunjhunu accepted the same and remanded the

matter back to the Estate Officer for fresh consideration by judgment dated March 10, 1997. After remand, the matter was re-appreciated by the Estate Officer. The Estate Officer was of the opinion that it was not proved that the land on which the shops were constructed was part of the public premises. In view of the said conclusion, the Estate Officer discharged eviction notice by an order dated April 06, 1998. Feeling aggrieved, the respondents preferred an appeal before the learned District Judge, Jhunjhunu. The learned District Judge, Jhunjhunu who heard the appeal, re-appreciated the whole evidence and after taking into consideration the evidence produced on the record of the case, came to the conclusion that the appellant had constructed shops on the land belonging to the government. In view of the said conclusion, the learned Additional District Judge ordered eviction of the appellant from the shops by judgment dated September 30, 2002. Thereupon, the appellant invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition no.8905/2002 and claimed the reliefs referred to earlier. The learned Single Judge has dismissed the same by judgment dated July 04, 2006 giving rise to the instant appeal,

This Court has heard Mr. Mahendra Goyal, learned counsel for the appellant and considered the documents forming part of the petition.

The contention that no evidence was produced by the respondents to indicate that the land in question belongs to the government whereas it was established by the appellant that he was in long possession of the same and, therefore, the impugned judgment deserves to be set aside has no substance. From the record of the case, it

is evident that the land in question is public premises being *gair mumkin abadi*. Except claiming that he was in long possession of the land in question on which the shops were constructed, the appellant could not produce any document to establish his title over the land. As observed earlier, the appellant had started raising construction on the land in the year 1985 when he was *sarpanch* of the village which was objected to by the Headmaster by addressing a letter to the Collector. The finding that the shops constructed by the appellant are situated on the land belonging to the government is a pure finding of fact reached by the Appellate Authority on the appreciation of evidence. Such a finding of fact is not liable to be interfered with in a petition flied under Article 226 of the Constitution.

Under the circumstances, this Court is of the opinion that the learned Single Judge was justified in not entertaining the petition filed by the appellant. No ground is made out by the learned counsel for the appellant to interfere with the impugned order in the instant appeal. Therefore, the appeal which lacks merits deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), Actg.CJ.**

Skant/-